

REMARKS

Applicant thanks the Examiner for withdrawing the rejection under 35 USC 112, second paragraph. However, before commenting on the single prior art rejection of record, applicant would like to comment once again on the claim interpretation advanced by the Examiner.

Claim 1 currently reads:

1. An intervertebral disc prosthesis, comprising two cover plates and a prosthesis core which is connected to one of the cover plates by connection profiles on the one of the cover plates and the prosthesis core, which connection profiles are undercut in a complementary manner, wherein the connection profiles include at least one pair of substantially straight profile sections which are disposed symmetrically with respect to an anterior-posterior direction of the prosthesis in an implanted position and are arranged to meet so that an angle included between the straight profile sections is not greater than 150°.

In the pending Action the Examiner stated, “Applicant is only claiming that the substantially straight profile sections meet and that an angle included between the substantially straight profile sections is not greater than 150 degrees. Applicant is not claiming that the straight profile sections meet at an angle not greater than 150 degrees.” With all due respect to the Examiner, that is a *non sequitur*. If the claimed profile sections meet, as the Examiner recognizes they do, and the angle included between them is not greater than 150 degrees, as the Examiner also recognizes, then it follows as a matter of logic that they meet at an angle of not greater than 150 degrees. The Examiner’s interpretation does not give effect to the actual language of the claim which states that the profile sections “are *arranged to meet so that* an angle included between the straight profile sections is not greater than 150°.” (Emphasis added.) Applicant chose this language since it expressed the invention concisely and was consistent with prior claim language.

Claims 1, 3 and 4 stand rejected as anticipated by Caenen. The Examiner has provided a marked-up version of Figs. 7 and 8 (erroneously referred to as Fig. 4 on page 2 of the Action) of Caenen to support her reading of Caenen. Applicant respectfully traverses this rejection.

The only cover plate of Caenen that has undercut profiles is lower plate 2, which are depicted by dotted lines 9 in Fig. 7 as reproduced by the Examiner. The Examiner does not

mention the connection profiles 16 on hub 3, which corresponds to applicant's claimed prosthesis core, so applicant does not address them here; in any event, they would be complementary to the grooves on lower plate 2, so the same analysis applies to them as the analysis set forth here with respect to grooves 9. Page 6, lines 5-9, of Caenen describes these profiles 9 in the following language:

The upper face of the lower plate is hollowed out in order to present two alignment grooves 9 *that are spaced and parallel*. According to one characteristic of the invention, the grooves 9 are oriented parallel to the hole 8 as seen in Figure 7. They are open at their anterior end and closed at their posterior end.

(Emphasis added.) There is no indication on Caenen Fig. 7 that grooves 9 meet at all, let alone as postulated by the Examiner. Furthermore, Caenen itself says that the grooves 9 are parallel, which means that they *cannot* meet even if they are extended.

The Examiner's interpretation of Caenen also does not give proper meaning to the claim language. The claim language requires that the profiles be *both* substantially straight *and* "arranged to meet." There can be no doubt that Caenen's straight grooves 9 are not arranged to meet, so they cannot be the claimed connection profiles on one of the cover plates. The "substantially straight section[s]" marked by the Examiner on Fig. 7 might meet, but the angle included between these alleged substantially straight sections which as explained on page 6 of the translation corresponds to curved anterior end 10a of alignment ramp 10, is far greater than 150 degrees. Furthermore, no person of ordinary skill in the art would call "curved" anterior end 10a a "substantially straight" section, anyway. The Examiner's interpretation does violence to both the verbal and pictorial disclosure of Caenen. On Fig. 7 the Examiner cannot have it both ways – either the straight sections do not meet or (if they are straight at all) they meet at an angle greater than 150 degrees.

Applicant also submits that the Examiner has misread Caenen Fig. 8, which is a sectional view down the mid-line 8-8 on Fig. 7. Fig. 8, by its nature, cannot and does not show "substantially straight profile sections which are disposed symmetrically with respect to an

anterior-posterior direction of the prosthesis in an implanted position.” There is no way to evaluate any disposition “symmetrically with respect to an anterior-posterior direction of the prosthesis” from Fig. 8 at all. Furthermore, the apparent undercut portion shown on Fig. 8 is actually the side ledge containing undercut groove 9, to which the lead line from reference numeral 2 extends in the figure as reproduced by the Examiner. The alleged included angle to which the Examiner points is not an included angle between profile sections at all.

For these reasons, Caenen does not anticipate claims 1, 3 and 4. Early action allowing claims 1, 3 and 4 is solicited.

In the event that the transmittal letter is separated from this document and the Patent and Trademark Office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing Docket No. 246472005200.

Respectfully submitted,

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